Willson & Pechacek, P.L.C. Newsletter

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Why Should Farmers Care if Their Crop Insurers Make Less Money?

By Jamie L. Cox.

Multi-peril crop insurance (MPCI) is a federally-subsidized, federally-regulated program providing risk protection to farmers. MPCI is delivered to farmers through a partnership between the federal government and private crop insurance companies. Over the past decade, public scrutiny of compensation (also called retained premium) paid to private crop insurance companies has grown as the size of the crop insurance program has increased substantially.

The public concern over the high level of compensation resulted in the 2008 Farm Bill that limited reimbursements to companies, and the 2010 renegotiation of the Standard Reinsurance Agreement (SRA) between the federal government and the private companies.

Based on a study published by the National Corn Growers Association on March 13, 2017, crop insurance company compensation between 1998 and 2015 has declined and is in line with benchmarks established by the federal government. According to the findings, from 1998 to 2010, crop insurance companies had an average net return on retained premium of 14.1 percent. From 2011 to 2015, returns averaged 1.5 percent, a decrease of 12.6 percentage points.

Compensation to crop insurance companies comes in two forms: (1) administrative and operating (A&O) reimbursements, and (2) underwriting gains. A&O reimbursements are meant to compensate companies for part of the costs associated with providing crop insurance to farmers. Underwriting gains are returns from bearing the risk of crop insurance losses. Companies earn positive underwriting gains in years when crop insurance indemnities are low, and underwriting losses occur in years with high indemnity payments. Both A&O reimbursements and underwriting gains are directly impacted by the terms of the SRA. The major provisions of the SRA are periodically renegotiated, with the last major change completed in 2010.

Crop insurance companies are responsible for delivering policies to farmers and managing the claims adjustment process. All companies provide the same policies to farmers using the same underlying rates. Companies also bear a portion of the risks associated with the performance of the policies. Therefore, with smaller returns after 2010, companies may be more motivated to cut as many expenses as possible. This may lead companies to more strictly enforce the crop insurance policy provisions against farmers, including even technical or minor violations that were not enforced in the past. As a result, companies may be more apt to deny farmers' crop loss claims, even long after the premiums have been paid and coverage has attached. This could have a crippling financial impact on farming operations depending on the size of the loss and how hard the insurance company chooses to fight litigation over the denial.

So, should farmers care if their crop insurers make less money? Probably. While this author has not seen any studies showing whether the rate of crop loss denials has increased with the decrease in company compensation, it is always better to be safe than sorry. Farmers should be extra cautious knowing that insurance companies have more incentive to cut expenses in order to offset decreased income. Throughout the crop insurance process, farmers (and the local crop insurance agents who help them bind insurance coverage) should be especially diligent in crossing their t's and dotting their i's.

If you have any questions about your rights or obligations under your crop insurance policy, or if your claim has been denied by the company, then please contact your attorney at your earliest opportunity for assistance.

Back to Basics: The Importance of Having and Updating a Will

By Eric Checketts

How would you feel about the idea of a state referendum deciding the fate of your property upon your death? Of course, that's not exactly how things would ever play out, but it is not entirely misleading to say that many people subject their property to the whims of the electorate by failing to execute a valid will. You might, for example, have promised to give your brother that signed Mickey Mantle rookie card (nobody ever told either of you it was actually a cheap reprint, signed by Dad) or promised your trusty Mossberg Patriot to a hunting buddy; but without a valid will, both promises would likely prove empty. The fact is that although the law allows you to do just about anything you want with your property after you die, if you don't express your wishes via a valid will, the court will distribute your property as prescribed by the intestacy laws written by your state legislature.

The specifics of intestacy laws vary from state to state. In Iowa, for example, the property of one who died without a valid will is to be distributed entirely to a surviving spouse, if there is one, so long as the decedent either leaves no children or leaves children who are all the children of the surviving spouse. Iowa Code Ann. § 633.211 (West). If the decedent leaves children, some of which were not also the children of the surviving spouse, then Iowa law provides for certain property to be distributed to the surviving spouse and the rest of the property to be distributed to the decedent's children who are then living, or, if the decedent has no children then living, then to the decedent's parents then living; or, if neither parent survives the decedent, then the law provides for distribution to the decedent's living siblings, grandparents, or cousins, if any, in that order of priority. Iowa Code Ann. § 633.219 (West).

"*Perfect,*" you might think, "*that's exactly how I would want my property distributed when I die.*" That is, of course, all well and good. And if the laws of intestacy in effect at the time of your death happen to treat your property the way you would have wanted, then that's a result everyone can be happy about. The problem, though, is that *things happen*. Thanksgiving dinner and temper tantrums by adult children *happen*. Family feuds over management of family businesses *happen*. Finding out a loved one is addicted to drugs or gambling *happens*. It doesn't take much before, under the laws of intestacy, distribution of your property will be to someone who you feel doesn't deserve it, doesn't need it, can't handle it, or who will be ruined by it.

Fortunately, the law is very generous in the latitude it provides you in distributing your own property after death. *See, e.g.*, Iowa Code Ann. § 633.265 (West) (stating that, in Iowa, "a testator may prescribe the entire manner in which the testator's estate shall be administered"). Taking advantage of such latitude is simple, as it generally only requires that you express your wishes (i) in writing; (ii) with your own signature (or the signature of some person in your presence and by your express direction writing your name thereto); (iii) with a declaration that it is your will; and (iv) witnessed by two competent persons in your presence and in each other's presence." Iowa Code Ann. § 633.279 (West). Indeed, there's at least one jurisdiction so liberal as to accept as valid a simple will etched into the bumper of a tractor. *See, e.g.*, Hull & Hull LLP, *Holographic Wills – Carving Your Will into the Bumper of Your Car*, Dec. 12, 2011, https://hullandhull.com/2011/12/holographic-wills-carving-your-will-into-the-bumper-of-your-car/ (telling of a farmer who was pinned under his overturned tractor, but managed to carve into the tractor's bumper his

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Social Security and Your Retirement

By Frank W. Pechacek, Jr.

Social Security policies were modified by the Bipartisan Budget Act of 2015. Your social security decisions may be the most important financial decision you make in your lifetime. Important facts to guide your decisions are:

* Full retirement age (FRA) is age 66 for persons born through 1954 and will gradually increase to age 67 for those born after 1954.

* At FRA, you may earn unlimited amounts of earned income and your social security benefits are not reduced. In 2017, for anyone who has not reached age 66, for every earned $2.00 over $16,920.00 you will forfeit $1.00 in benefits.

* You or your spouse may claim spousal benefits as early as age 62. In contrast, if you do not claim benefits until age 70, your benefits increase by $760.00, i.e. each $1,000.00/month benefit at age 62 becomes $1,760.00/month at age 70.

* 75% of retirees claim benefits at FRA (age 66 in 2017), or earlier. Only 3% wait until age 70. For example, if age 62 benefits are $1,000.00/month, waiting until age 70 means 96 payments or $96,000.00 were not received. It takes many years of larger benefits checks to “catch up” this front end loss.

* When calculating the “break even” point of number of years of higher benefit checks to “catch up” this front end loss, remember to calculate the earnings the checks received will produce (i.e. 96 payments from age 62 to age 70). Typically, the break even age is 90 years of age or older, plus there is the assurance of receiving these early payments until the time of death and thus avoiding a potential loss of benefits caused by early death.

* Additional survivor benefits may be available to a surviving spouse and surviving children. A surviving spouse may take the benefits as early as age 60 (or age 50, if disabled). Additional benefits are payable to each surviving unmarried child up to age 18 (up to age 19 if attending school full time).

The more exotic concepts of 1) “file and suspend” and 2) “deemed filing” will be presented in the next Willson & Pechacek, P.L.C. newsletter.

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wishes: "In case I die in this mess, I leave all to the wife”).

As important as is having a valid will, it is equally important to keep your will up-to-date. Every life is dynamic, and circumstances are constantly in flux. Your will might have been a perfect fit when written, but what about after a recent marriage or divorce? What about the children who have been born or adopted since the will was written? What about that enormous collection of Beanie Babies once expected to be worth millions and originally left in your will as the only gift to your beloved daughter, but now worth less than the gas required to drop it off at the nearest Goodwill?

Ultimately, whatever the will requires for distribution of your property is the way the property will be distributed. If Jane Doe were to write a will leaving “ten Class A shares of stock in Berkshire Hathaway, Inc. to my best friend, Suzie Jones,” the probate court won’t be able to offer much help after Jane’s death when her executor tries to tries to explain that Jane and Suzie had a major falling out about a year after the will was executed. Even though the former friends hadn’t spoken in years, Suzie’s about to be a millionaire.

Changed circumstances don’t need to be the enemy of the estate plan. Updating a will is easy: though you could always just rewrite the whole thing, it generally requires nothing more than executing something called a *codicil*—a simple document that can be as short as a single page, which describes the desired changes to the will. (Note that a codicil generally has the same signature and witness requirements as a will.)

In short, a word of caution to those who care what happens to their property after they die: obtain a valid will, and vigilantly update that will as circumstances require.